



The Attorney General of Texas

May 27, 1981

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Honorable Tim Curry
Criminal District Attorney
Tarrant County Courthouse
Fort Worth, Texas 76102

Open Records Decision No. 272

Re: Availability under Open
Records Act of results of blood
alcohol test

Dear Mr. Curry:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether the results of a blood alcohol test are available to the public.

The records sought by the requestor are the results of a blood alcohol test performed on a police officer of the city of Fort Worth. The officer was alleged to have been shot when another officer's gun fired during a scuffle with suspects. The injured officer was immediately taken to John Peter Smith Hospital, a facility operated by the Tarrant County Hospital District. The blood alcohol test at issue here was subsequently performed by the hospital staff. The officer died the following day. Although the requestor originally sought to obtain the information from both the hospital and the Fort Worth Police Department, he now seeks disclosure only from the hospital. You suggest that information regarding the results of the blood alcohol test is excepted by sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Section 3(a)(1) excepts "information deemed confidential by law," specifically by a common law or constitutional right of privacy. See generally Open Records Decision Nos. 260 (1980); 258 (1980). In Attorney General Opinion H-917 (1976), however, this office held that the right of privacy is personal to an individual and lapses upon his death. Accordingly, we believe it is clear that the results of the blood alcohol test performed upon the now deceased officer are not excepted from disclosure by a constitutional or common law right of privacy under section 3(a)(1).

You also contend that the information is excepted under section 3(a)(8), as a record of a law enforcement agency. Although the Tarrant County Hospital District is clearly not a law enforcement agency, Open Records Decision Nos. 199 (1978); 36 (1974), it has been held that, since information may be transferred between governmental agencies without destroying its confidential character, records which otherwise qualify for the section 3(a)(8) exception do not necessarily lose that status while in the custody of an agency not directly involved in law enforcement. Open

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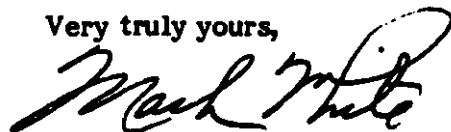
Records Decision No. 183 (1978). The question remains, however, whether the results of the blood alcohol test may reasonably be deemed to fall within the exception.

In Attorney General Opinion H-861 (1976), this office said that:

where results of analyses of blood samples are prepared for the purpose of possible prosecution for a criminal offense. . . they are excepted from required public disclosure by section 3(a)(8). . . .

Otherwise, they are not necessarily excepted. By letter of November 13, 1980, you advised us that, although the Fort Worth Police Department conducted an internal investigation into the death of the officer, that investigation has been completed. See Open Records Decision No. 252 (1980). Accordingly, it is our decision that the information is available to the public and should be disclosed.

Very truly yours,



MARK WHITE
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